

THE HONORABLE TANA LIN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FIRST FED BANK, a Washington state  
commercial bank,

Plaintiff,

vs.

BLC WATER COMPANY LLC, a Nevada  
Limited Liability Company, Brian S. Chu, an  
individual, and Larina H. Chu, an individual,

Defendants.

No. 3:24-CV-05729-TL

**REPLY IN SUPPORT OF MOTION TO  
CONSOLIDATE AND STAY SIX  
DECLARATORY JUDGMENT  
ACTIONS FILED BY FIRST FED**

NOTING DATE: OCTOBER 1, 2024

3:24-cv-05729-JHC  
3:24-cv-05730-JNW  
3:24-cv-05731-DGE  
3:24-cv-05732-BHS  
3:24-cv-05736-BHS  
2:24-cv-01389-KKE

**I. REPLY IN SUPPORT OF STAY OR DISMISSAL**

Defendants in the above-captioned matter respectfully submit this reply in support of their September 10, 2024, Motion to Consolidate and Stay Six Declaratory Judgment Actions Filed By First Fed.

**A. Factual Background Recapping First Fed Bank's Litigation Tactics.**

First Fed Bank ("First Fed") has run up the cost of litigation for several individual mom-and-pop borrowers (hereinafter the "First Fed Borrowers") since originally being named as a defendant in a state court action by the First Fed Borrowers in June. Shortly after First Fed was

1 named as a defendant in that state court action, the bank improperly removed the entire action  
2 under the Class Action Fairness Act (CAFA). Although there were many parties named on both  
3 sides of that action, the case was not a class action—the state action was about investors whose  
4 families became victims of an apparent \$100+ million franchise fraud Ponzi scheme and could  
5 simply not afford to advance a case of such magnitude alone.

6 No individual borrower or family, alone, should be forced to litigate the complex issues  
7 involved in unraveling a Ponzi scheme against banks and the other deep-pocketed litigants. For  
8 that reason, the First Fed Borrowers came together for group representation in an effort to  
9 disperse and thereby lower litigation expenses—not to advance a class action. This effort was  
10 derailed by First Fed’s improper removal of the action. In addition to the fact that removal under  
11 CAFA was improper, First Fed’s removal was also improper because it violated the automatic  
12 stay imposed in the Ideal Property receivership and was therefore void.<sup>1</sup>

13 Rather than litigating these issues with First Fed, the First Fed Borrowers voluntarily  
14 dismissed the federal court action (without prejudice) as to First Fed in order to focus on out of  
15 court settlement negotiations. While this rationale may not make sense to a \$2 billion bank, it  
16 makes perfect sense when looked at through the lens of an individual borrower. As already  
17 mentioned, the First Fed Borrowers are mom-and-pop type investors who were fraudulently  
18 induced to invest in a Ponzi scheme.

19 Indeed, First Fed loaned \$28+ million directly to the Ponzi scheme and hedged its bet  
20 through a loan program for that Ponzi scheme which induced individual investors to take out  
21 loans for the same scheme—facts that were never disclosed to the First Fed Borrowers in the  
22 lending process. When the Ponzi scheme collapsed, as was inevitable, First Fed mitigated its  
23

24  
25 <sup>1</sup> See King County Superior Court Case No. 24-2-08418-5 SEA Order Appointing General Receiver,  
Filed May 3, 2024.

1 losses by aggressively pursuing enforcement of the subject loans and threatening foreclosure  
2 on the First Fed Borrowers' personal assets. As such, the First Fed Borrowers entered litigation  
3 with relatively shallow pockets to begin with.

4 Instead of spending lots of money to litigate the procedural issues raised by First Fed's  
5 improper removal, the First Fed Borrowers believed it was a more cost-effective strategy to  
6 dismiss the action and focus solely on out of court settlement negotiations. Of course, this came  
7 with the understanding that—as the state action was dismissed *without* prejudice—the First Fed  
8 Borrowers could re-file their state action, barring settlement. Therefore, although not actively  
9 pending, there was always a risk of adverse judgment at the end of the road if First Fed refused  
10 to engage in meaningful settlement negotiations—First Fed surely knew this.

11 **B. This Court Should Stay Or Dismiss The Several Declaratory Actions.**

12 First Fed apparently took the First Fed Borrowers' previous voluntary dismissal as an  
13 opportunity to go on the offensive and further hijack the litigation surrounding the Ponzi scheme  
14 which the bank funded. Rather than engage in meaningful settlement discussions, First Fed  
15 prepared several declaratory judgment actions in what is clearly a forum shopping maneuver.

16 Notably, First Fed's response does not address preemptive declaratory judgment filings  
17 and instead only discusses reactive filings. First Fed argues that *Brillhart* and *Wilton* do not  
18 create a general presumption in favor of abstention in declaratory judgment actions and that a  
19 district court cannot decline to entertain such an action as a matter of whim or personal  
20 disinclination. (Dkt. 16 at 4). First Fed's response misses the point of the First Fed Borrowers'  
21 motion.

22 Rather than rely on a presumption or personal disinclination, *Brillhart*, *Wilton*, and  
23 *Colorado River* lay out several factors that provide this Court ample discretion to abstain from  
24 exercising jurisdiction over declaratory actions that are filed as preemptive strikes. As relevant,  
25

1 those factors include, *inter alia*, 1) whether there is a pending state action in which all of the  
2 matters in a controversy may be fully litigated; 2) whether the plaintiff filed suit in anticipation  
3 of the lawsuit filed by the defendant; 3) whether the plaintiff engaged in forum shopping;  
4 4) whether inequities exist; 5) whether the federal court is a convenient forum; and 6) whether  
5 retaining the lawsuit would serve purposes of judicial economy. *Brillhart v. Excess Insurance*  
6 *Co. of America*, 316 U.S. 491, 62 S.Ct. 1173, 1175, 86 L.Ed. 1620 (1942); *Wilton v. Seven Falls*  
7 *Co.*, 515 U.S. 277, 115 S.Ct. 2137, 132 L.Ed.2d 214 (1995); *see also Colorado River Water*  
8 *Conservation Dist. v. U. S.*, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976) (explaining  
9 that countervailing interests in state actions may constitute exceptional circumstances for a  
10 federal court to abstain from declaratory relief); *Ivy-Mar Co., Inc. v. Weber-Stephen Products,*  
11 *Co.*, 1993 WL 535166 (S.D.N.Y. Dec. 22, 1993) (parties advancing affirmative claims for  
12 damages, rather than for declaratory judgment, are “true plaintiffs”).

13 This Court should grant the stay or dismissal because, *inter alia*, 1) there is a pending  
14 state action in which all of the matters in controversy may be fully litigated; 2) the six lawsuits  
15 pending in this Court were all filed in anticipation of the borrowers re-filing their affirmative  
16 claims in state court; 3) First Fed engaged in forum shopping; 4) inequity would result from the  
17 limited relief available to the First Fed Borrowers in this forum; and 5) this action does not turn  
18 on any federal issues and King County Superior Court is a competent forum of general  
19 jurisdiction that can adequately protect the rights of the litigants; and 6) judicial economy is  
20 better served by this Court deferring to the state action where the same issues are being heard  
21 and are subsumed in a more complex case where more progress has been made.

22 First Fed does not argue that the declaratory judgment actions were not filed  
23 preemptively (because they were), but only that the filings were not “reactive.” (Dkt. 16 at 6).  
24 This Court should decline such a rigid interpretation of the case law. Although the declaratory  
25

1 actions were filed first, they were filed after a voluntary dismissal of the first lawsuit against  
2 First Fed. First Fed was on notice that the affirmative claims against it would be renewed barring  
3 settlement. The six pending declaratory action were filed in anticipation of the new claims in  
4 an effort to procure a preferred forum for those claims. Whether considered preemptive or  
5 reactive, these maneuvers favor a dismissal or stay of the federal actions.

## 6 II. CONCLUSION

7 The several filings of declaratory actions are just the latest of multiple improper forum  
8 shopping maneuvers engaged in by First Fed since being named a party to the state action in  
9 June. This Court has ample discretion to dismiss or stay declaratory actions when they are  
10 preemptively or reactively filed. First Fed does not oppose consolidation of the six declaratory  
11 actions filed in this Court. For the foregoing reasons, the First Fed Borrowers respectfully  
12 submit that this Court should consolidate and dismiss (or stay) the six declaratory judgment  
13 actions filed by First Fed in favor of the parallel state court proceedings.  
14

15 DATED this 1st day of October, 2024.

16 CORR CRONIN LLP

17 s/Jack Lovejoy

18 Jack Lovejoy, WSBA No. 36962

19 Kristen Barnhart, WSBA No. 51135

20 Jakob C. Goldfarb, WSBA No. 62165

21 CORR CRONIN LLP

22 1015 Second Avenue, Floor 10

23 Seattle, WA 98104-1001

24 Telephone: 206-625-8600

25 jlovejoy@corrchronin.com

karnhart@corrchronin.com

jgoldfarb@corrchronin.com

*Attorneys for Defendants*

*I certify that this memorandum contains 1,284 words, in compliance with the local Civil Rules.*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**CERTIFICATE OF SERVICE**

I hereby certify that on October 1, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All parties (if any) shall be served in accordance of the Federal Civil Rules of Procedure.

DATED October 1, 2024, at Bremerton, Washington.

s/Cambria Love  
Cambria Love, Legal Assistant  
clove@corrchronin.com